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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209857
Party	Plaintiff Deford Bailey LLC
Correspondence Address	MARIA A SPEAR AMY J EVERHART EVERHART LAW FIRM PLC 1400 FIFTH AVENUE NORTH NASHVILLE, TN 37208 UNITED STATES maria@everhartlawfirm.com, amy@everhartlawfirm.com
Submission	Motion for Summary Judgment
Filer's Name	Amy J. Everhart
Filer's e-mail	amy@everhartlawfirm.com, maria@everhartlawfirm.com
Signature	/Amy J. Everhart/
Date	01/08/2014
Attachments	motion.summary.judgment.pdf(118707 bytes) everhart.dec.pdf(600604 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Deford Bailey LLC,)	
Opposer,	)	Opposition No. 91209857
)	
v.	)	Application Serial No. 85304626
)	
Carlos Deford Bailey	)	Published in the Official Gazette on
Applicant.	)	February 19, 2013

**OPPOSER’S MOTION FOR SUMMARY JUDGMENT
AND BRIEF IN SUPPORT THEREOF**

Opposer, Deford Bailey LLC, hereby moves the Trademark Trial and Appeal Board (the “Board”) for summary judgment in favor of Opposer on its claims pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Applicant Carlos Bailey has admitted to signing a license agreement with Opposer acknowledging he does not have any right to the name DEFORD BAILEY and shall make no claim of ownership or interest in the name, and that a license from Opposer is required to use the name in connection with the sale of harmonicas. Accordingly, summary judgment should be granted in favor of Opposer on its Notice of Opposition, and Applicants’ application for registration of the mark DEFORD BAILEY should be rejected.

UNDISPUTED FACTS

Deford Bailey is renowned as the first African-American performer at the Grand Ole Opry in Nashville, Tennessee. Mr. Bailey was a harmonica virtuoso and was inducted posthumously into the Country Music Hall of Fame in 2005. Mr. Bailey died in 1982. (Notice of Opposition, ¶ 1, Answer, ¶ 1.)

Opposer is a successor in interest to the name and likeness rights of Deford Bailey. (Declaration of Amy J. Everhart, Ex. 1 (Opposer's Requests for Admission) & Ex. A thereto (Name and Likeness License Agreement), and Ex. 2 (Applicant's Response to Opposer's Request for Admission No. 5).)

On April 26, 2011, Carlos Bailey, a grandson of Deford Bailey, filed with the United States Patent and Trademark Office Application Serial No. 85304626 for registration of the mark DEFORD BAILEY (the "Mark") in the category of "harmonicas."¹

On March 20, 2013, Opposer filed a Notice of Opposition, alleging, in part, that, because of Opposer's ownership of and interest in the Mark, approval of Applicants' application for registration of the Mark is likely to confuse and deceive consumers.

On or about April 18, 2012, Applicant Carlos Bailey entered into a Name and Likeness Licensing Agreement with Opposer (the "Agreement"). ((Declaration of Amy J. Everhart, Ex. 1 (Opposer's Requests for Admission) & Ex. A thereto (Name and Likeness License Agreement), and Ex. 2 (Applicant's Response to Opposer's Request for Admission No. 5).) The Agreement provides, in relevant part:

WHEREAS, the parties desire that CB [Carlos Bailey] pay Licensor [Opposer] for the use of DeFord Biley's name and likeness in connection with CB's marketing, sale, and distribution of products bearing the DeFord Bailey name, specifically, t-shirts and harmonicas.

1.1 "Licensed Property" means the name DEFORD BAILEY and the goodwill appurtenant thereto.

¹ DeFord Bailey III is the other named Applicant. Although not at issue in this motion for summary judgment, Opposer intends to prove at trial, if summary judgment is not granted, that Carlos Bailey fraudulently represented that Deford Bailey III, another grandson of Deford Bailey, joined him in filing the application.

1.2 “Products” means the t-shirts and harmonicas marketed, sold, distributed, displayed, and/or produced by or for CB in existence as of the Effective Date [April 18, 2012] or created thereafter.

2.1 Grant of License. Licensors hereby grants to CB the non-exclusive license and right to use the Licensed Property in connection with the Products.

2.2 Reservation of Rights. Use of Licensed Property, and the goodwill associated therewith, shall inure solely to Licensors. Except for the license granted hereunder and as otherwise provided herein, (a) as between the parties, Licensors retains any right, title and interest in and to the Licensed Property, and (b) CB acknowledges and agrees that it will not have any right, title or interest in or to the Licensed Property, and CB shall not make any claim of ownership or interest in or to such Licensed Property.

(*Id.*)

ARGUMENT

A. Legal Standard

The Board in *Hershey Chocolate & Confectionery Corp. v. Wiesen*, 2013 TTAB LEXIS 628 (TTAB Dec. 27, 2013), set forth the legal standard for a motion for summary judgment in Board opposition proceedings:

A motion for summary judgment is a pretrial device intended to save the time and expense of a full trial when the moving party is able to demonstrate, prior to trial, that there is no genuine dispute of material fact, and that it is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); and *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). If the moving party is able to meet this initial burden, the burden shifts to the nonmoving party to demonstrate the existence of specific genuinely disputed facts that must be resolved at trial. The nonmoving party may not rest on mere allegations or assertions but must designate specific portions of the record or produce additional evidence showing the existence of a genuine dispute of material fact for trial. Should the nonmoving party fail to raise a genuine dispute of material fact as to an essential element of the moving party’s case, judgment as a matter of law may be entered in the moving party’s favor.

A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *See Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992). The evidence must be viewed in a light most favorable to the non-moving party, and all reasonable inferences are to be drawn in the non-movant's favor. *Lloyd's Food Products, Inc. v. Eli's, Inc.*, 987 F.2d 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Opryland USA, supra*. The Board does not resolve disputes of material fact but rather only ascertains whether disputes of material fact exist. *See Lloyd's Food Products*, 987 F.2d at 766, 25 USPQ2d at 2029; *Olde Tyme Foods*, 961 F.2d at 200, 22 USPQ2d at 1542.

Id. at **4-5.

B. Summary Judgment Should Be Granted in Favor of Opposer Because Applicant Carlos Bailey Has Admitted He Has No Interest in the Mark, Such Rights Are Owned by Opposer, and a License from Opposer Is Necessary to Use the Mark in Connection with Harmonicas.

Applicant Carlos Bailey admitted that he signed a Name and Likeness license with Opposer in 2012. (Declaration of Amy J. Everhart, Ex. 1 (Opposer's Requests for Admission) & Ex. A thereto (Name and Likeness License Agreement), and Ex. 2 (Applicant's Response to Opposer's Request for Admission No. 5).) In that Agreement, he acknowledged Opposer's ownership of the name DEFORD BAILEY and its appurtenant goodwill. He acknowledged that he must have a license to use the name in connection with sale of harmonicas. Finally, he acknowledged that he had no interest in the name, and he agreed not to make any claims of ownership or interest in the name himself. By these admissions, Applicant Carlos Bailey has conceded that he had no right to file his application Serial No. 85304626 for the Mark in connection with harmonicas and that he does not have a legitimate ownership interest in the Mark. Accordingly, summary judgment should be granted in favor of Opposer on its Notice of Opposition, and Applicants' application for registration should be rejected.

CONCLUSION

For the reasons stated herein, summary judgment should be granted in favor of Opposer, and Applicants' application, Serial No. 85304626 should be rejected.

Respectfully submitted,

Deford Bailey LLC, the Opposer

By: /Amy J. Everhart/
Amy J. Everhart
Maria A. Spear
Everhart Law Firm PLC
1400 Fifth Avenue North
Nashville, TN 37208
(615) 800-8919
Facsimile: (615) 800-8918
amy@everhartlawfirm.com
maria@everhartlawfirm.com

Attorneys for Opposer,
Deford Bailey LLC

Date: January 8, 2014

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served via electronic mail and U.S. Mail, postage prepaid, on this 8th day of January, 2014.

Walter M. Benjamin
P.O. Box 6099
Tulsa, OK 74148
wabenj@netzero.com

/Amy J. Everhart/
Amy J. Everhart

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Deford Bailey LLC,)	
Opposer,	)	Opposition No. 91209857
)	
v.	)	Application Serial No. 85304626
)	
Carlos Deford Bailey	)	Published in the Official Gazette on
Applicant.	)	February 19, 2013

DECLARATION OF AMY J. EVERHART

I, Amy J. Everhart, of full age, hereby declare as follows:

1. I am an attorney with Everhart Law Firm PLC, counsel for Opposer.
2. I attach hereto as Exhibit 1 a true and correct copy of Opposer's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission served on Applicants.
3. I attach hereto as Exhibit 2 a true and correct copy of Applicants' Responses to Opposer's Requests for Admission.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of January, 2014.

/Amy J. Everhart/
Amy J. Everhart

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DEFORD BAILEY LLC,)	
Opposer,	)	Opposition No. 91209857
)	
v.	)	Application Serial No. 85304626
)	
CARLOS DEFORD BAILEY and	)	Published in the Official Gazette on
DEFORD BAILEY III,	)	February 19, 2013
Applicants.)	

**OPPOSER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION
OF DOCUMENTS AND REQUESTS FOR ADMISSION TO APPLICANTS**

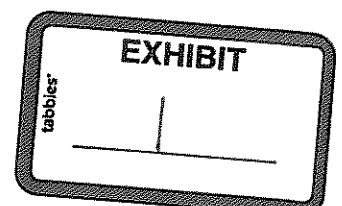
Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, Opposer, Deford Bailey LLC, propounds the following Interrogatories, Requests for Production of Documents and Requests for Admission on Applicants, Carlos Deford Bailey and DeFord Bailey III.

I. INSTRUCTIONS

1. Unless otherwise specified, the information and documents requested below are requested for the time period January 1, 2011, to the present.

2. You must respond to each interrogatory and request separately and fully in writing under oath unless it is objected to, in which event the reasons for objection shall be stated in lieu of a response. You must serve a copy of the response and any objections within thirty (30) days after the date of service hereof.

3. The interrogatories and requests are continuing in nature and require supplemental responses if the responding party obtains further information after responding to these interrogatories and requests. Demand for supplementation is hereby made.



4. Terms not defined in the Definitions section below shall have the respective meanings ascribed to such terms in the Opposition or, if not defined in the Opposition, shall be ascribed their ordinary and usual meanings.

5. All responses to these interrogatories and requests shall include such documents as are in the custody, possession or control of the responding party, including documents held by the party, employees, agents, attorneys, accountants or other representatives acting on the party's behalf.

6. Documents produced in response to these interrogatories and requests should be identified as to the particular interrogatory or request to which the document is responsive.

7. If any documents that refer or relate to anything about which these interrogatories and requests ask have been destroyed, identify each such document, the date of destruction and the name of the person who ordered or authorized the destruction.

8. If you claim that any of the documents requested are privileged, identify the document by date, author and recipient (if any) and substance, and state the applicable privilege.

9. If any documents requested herein are in the possession, custody or control of another, please identify the person having each such document in his possession, custody or control.

10. The use of the singular form of any word includes the plural and vice versa.

II. DEFINITIONS

11. "You" and "your" refers to Carlos Deford Bailey, DeFord Bailey III, and any of their present or former employees, counsel, agents, representatives, or other persons acting or purporting to act on their behalf or under their control.

12. “DB LLC” refers to Deford Bailey LLC and any of its present or former officers, directors, owners, employees, in-house and outside counsel, agents, representatives, or other persons acting or purporting to act on its behalf or under its control, as well as any predecessor or successor company, parent company, subsidiary or affiliate and including, without limitation, Shemika Turnley Wiley and Deford Bailey, Jr.

13. The Pending Application refers to that pending trademark application on the Principal Register of the United States Patent and Trademark Office for the mark DEFORD BAILEY, U.S. Serial No. 85304626.

14. The term “document” shall have the broadest meaning defined by Fed. R. Civ. P. 34(a) and applicable case law, and shall include, without limitation, anything on or in which any information is fixed and can be perceived, reproduced or otherwise communicated, with or without the aid of any machine or device, and regardless of the medium of expression in which the information is fixed (e.g., print, video, audio or other medium of expression), including, without limitation, contracts, agreements, papers, photographs, tape recordings, transcripts, checks, checkbooks, check stubs, check statements, bank statements, deposit slips, journals, general and subsidiary ledgers, worksheets, accounts, bills, promissory notes, invoices, punch cards, purchase orders, acknowledgements, authorizations, sales slips, receipts, shipping papers, letters or other forms of correspondence, telex, TWX and other teletype communications, computer printouts, any other printout sheets, movie film, slides, microfilm, memoranda, reports, studies, summaries, minutes, minute books, circulars, notes (whether typewritten, handwritten or otherwise), agenda, bulletins, notices, announcements, proofs, sheets, instructions, charts, tables, manuals, brochures, magazines, pamphlets, lists, visitors’ logs, schedules, price lists, telegrams, engineering and/or architectural drawings, other drawings, sketches, plans, blueprints,

specifications, diagrams, drafts, books and records, desk calendars, notebooks, diaries, registers, appointment books, budgets, analyses, projections, minutes of meetings, conferences or discussions of any kind, tax returns, and any other data compilations from which information can be obtained or translated.

15. The term “document” includes any copy or copies of any of the foregoing on which any mark, alteration or additional writing or other change from the original, or from any other copy, has been made; and includes any and all documents in your possession or the possession of any other person or entity acting on your behalf.

16. “Oral communication” means any utterance heard by another person, whether in person, by telephone, or otherwise.

17. “Identify” and “identification” and “the identity of” means as follows:

- a. When used in reference to an individual person, it means his or her full name, present or last known business affiliation and position, present or last known residential and business address and present or last known address, telephone number, facsimile number and email address.
- b. When used in reference to a corporation, firm or other entity, it means its full name, form of organization, and present or last known address and telephone number.
- c. When used in reference to a document, it means the type of document (e.g., letter, memorandum, telegram, chart, contract, prospectus, newspaper article, or the like), its author or originator, the date it was originated, its recipients, its present location by address, and its custodian;

and if the document was, but is no longer, in your possession or subject to your control, to state what disposition was made of it.

- d. When used in reference to a meeting or conference, it means the date of the meeting or conference, the place of the meeting or conference, and the full name and the present or last known position, business affiliation and residential address of each person attending the meeting or conference.
- e. When used in reference to an oral communication, it means the full name of the participants to the oral communication, their business affiliation and business address at the time, their present or last known position, business affiliation and residential address, the location of each participant at the time the oral communication took place, which participants initiated the oral communication and when the oral communication took place.

18. The term “person” includes an individual, a corporation, a partnership or joint venture or any other entity.

19. The “Opposition” means the Notice of Opposition filed on March 20, 2013, by DB LLC, and any and all amendments thereto.

20. The “Answer” means the Answer to Notice of Opposition filed on April 13, 2013, and any and all amendments thereto.

III. INTERROGATORIES

1. Identify all persons who provided information, or any other assistance, used in responding to these interrogatories and document requests, and, with respect to each person, state the substance of information provided by that person.

RESPONSE:

2. Identify all persons with knowledge of any facts alleged in the Opposition or Answer and, for each such person, describe the subject(s) and the substance of each person's knowledge.

RESPONSE:

3. Identify all oral and written communications between Carlos Bailey and Deford Bailey III reflecting, referring or relating to the events that are the subject of the Opposition and/or Answer, including all parties to each such communication, a detailed description of the topics discussed during each such communication, and the date of each such communication.

RESPONSE:

4. Identify all oral and written communications between you and any other person or entity reflecting, referring or relating to the events that are the subject of the Opposition and/or Answer, including all parties to each such communication, a detailed description of the topics discussed during each such communication, and the date of each such communication.

RESPONSE:

5. Identify the date of first use and describe the manner in which you first began using the mark DEFORD BAILEY in connection with harmonicas.

RESPONSE:

6. Identify all documents, including, without limitation, marketing materials, correspondence, print-outs from the Internet, and/or brochures, evidencing your use of the mark DEFORD BAILEY in connection with harmonicas.

RESPONSE:

7. Identify all documents reflecting, referring or relating to the formation of the Deford Bailey Foundation mentioned in Paragraph 3 of the Answer.

RESPONSE:

8. Identify all documents reflecting, referring or relating to the formation of Deford Bailey Group, LLC mentioned in Paragraph 3 of the Answer.

RESPONSE:

9. State all facts that support or disprove your claim that Deford Bailey III joined Carlos Deford Bailey in applying for registration of the mark DEFORD BAILEY, as stated in Paragraph 14 of the Answer.

RESPONSE:

10. State all facts that support or disprove your affirmative defenses of laches, estoppel, and/or acquiescence.

RESPONSE:

11. State the number of harmonicas sold by or on behalf of you to date using the mark DEFORD BAILEY, and identify, for each sale:

- a. The date of each sale;
- b. The method of each sale;
- c. The income received for each sale;
- d. The expense incurred in connection with each sale; and
- e. The location of each sale.

RESPONSE:

12. State the last known contact information for Ron Bailey, including his address, phone number and email address.

RESPONSE:

IV. REQUESTS FOR PRODUCTION OF DOCUMENTS

Produce the following documents at the office of Everhart Law Firm PLC, 1400 Fifth Avenue North, Nashville, TN 37208.

1. All documents referenced in answering or requested to be identified in the preceding interrogatories and/or that reflect, refer or relate to any information identified in your answers to the preceding interrogatories.

RESPONSE:

2. All documents concerning the facts or events alleged in the Opposition and/or the Answer.

RESPONSE:

3. All documents reflecting or concerning any meetings, correspondence or other communications between Carlos DeFord Bailey and Deford Bailey III in connection with the events alleged in the Opposition and/or the Answer.

RESPONSE:

4. All documents reflecting or concerning any meetings, correspondence or other communications between you and Ron Bailey in connection with the events alleged in the Opposition and/or the Answer.

RESPONSE:

5. All documents reflecting or concerning any meetings, correspondence or other communications between you and any other person or entity in connection with the events alleged in the Opposition and/or the Answer.

RESPONSE:

6. All documents reflecting or relating to the registration or attempted registration of the mark DEFORD BAILEY by or on behalf of you.

RESPONSE:

7. The Deford Bailey Foundation's corporate charter, bylaws, and/or articles of incorporation.

RESPONSE:

8. Deford Bailey Group, LLC's corporate charter, bylaws, and/or articles of incorporation.

RESPONSE:

9. All documents evidencing your use of the mark DEFORD BAILEY from January 1, 2011, to the present.

RESPONSE:

10. A copy of all trial, hearing, or deposition transcripts including the testimony of either of you.

RESPONSE:

11. Documents sufficient to reflect all members of Deford Bailey Group, LLC.

RESPONSE:

12. Documents sufficient to reflect all officers and directors and/or board members of the Deford Bailey Foundation.

RESPONSE:

13. All agreements related to or in connection with the mark DEFORD BAILEY, including, without limitation.

RESPONSE:

14. All documents reflecting the use in commerce by you of the mark DEFORD BAILEY.

RESPONSE:

V. REQUESTS FOR ADMISSION

1. Admit that the Pending Application was filed without the prior authorization of Deford Bailey III.

RESPONSE:

2. Admit that the Pending Application was filed without the knowledge of Deford Bailey III.

RESPONSE:

3. Admit that attorney Walter Benjamin, had never met or communicated with Deford Bailey III before the Pending Application was filed.

RESPONSE:

4. Admit that the Answer was filed without the prior authorization of Deford Bailey
III.

RESPONSE:

5. Admit that Carlos Bailey signed the document entitled "Name and Likeness
Licensing Agreement" attached hereto as Exhibit A.

RESPONSE:

6. Admit that DeFord Bailey III signed the declaration attached hereto as Exhibit B.

RESPONSE:

Respectfully submitted,

Deford Bailey LLC, the Opposer

By:

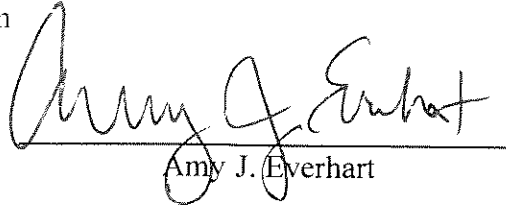

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Facsimile: (615) 800-8918
amy@everhartlawfirm.com
maria@everhartlawfirm.com

Attorneys for Opposer,
Deford Bailey LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served via electronic mail, facsimile and U.S. Mail, postage prepaid, on this 22nd day of October, 2013.

Walter M. Benjamin
P.O. Box 6099
Tulsa, OK 74148
wabenj@netzero.com



Amy J. Everhart

NAME AND LIKENESS LICENSING AGREEMENT

THIS NAME AND LIKENESS LICENSING AGREEMENT (the "Agreement") is by and between DeFord Bailey LLC ("Licensor"), a Tennessee Limited Liability Company, and Carlos Bailey ("CB"). The effective date of this Agreement shall be April 18, 2012 (the "Effective Date").

WHEREAS, the parties desire that CB pay Licensor royalties for the use of DeFord Bailey's name and likeness in connection with CB's marketing, sale, and distribution of products bearing the DeFord Bailey name, specifically, t-shirts and harmonicas.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Certain Definitions.

1.1 "Licensed Property" means the name DEFORD BAILEY and the goodwill appurtenant thereto.

1.2 "Products" means the t-shirts and harmonicas marketed, sold, distributed, displayed and/or produced by or for CB in existence as of the Effective Date or created thereafter.

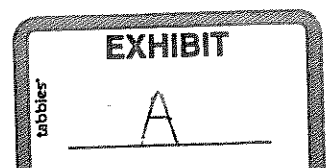
2. License.

2.1 Grant of License. Licensor hereby grants to CB the non-exclusive license and right to use the Licensed Property in connection with the Products.

2.2 Reservation of Rights. Use of Licensed Property, and the goodwill associated therewith, shall inure solely to Licensor. Except for the license granted hereunder and as otherwise provided herein, (a) as between the parties, Licensor retains any right, title and interest in and to the Licensed Property, and (b) CB acknowledges and agrees that it will not have any right, title or interest in or to the Licensed Property, and CB shall not make any claim of ownership or interest in or to such Licensed Property.

3. Fees. CB shall pay Licensor royalties equal to twenty percent (20%) of the gross receipts derived from the sale of the Products. Payment of the royalty amounts shall be accompanied by reasonable written detail of the basis for the payment. Such royalty amounts shall be payable within fourteen (14) days of the sale of the Products.

4. Product Approval. CB shall provide Licensor with a sample of each Product before selling any such Product. Licensor has the right to refuse the sale of any such Product for any reason within Licensor's discretion.



5. **Representations and Warranties.** Each party represents and warrants that:

(a) it has full power (corporate or otherwise) and authority to enter into and perform its obligations under this Agreement, and all actions necessary to authorize the execution, delivery and performance of this Agreement have been taken by such party; and

(b) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein will conflict with or result in any breach of or event of termination under any of the terms of, or constitute a default under or result in the termination of or the creation or imposition of any encumbrance pursuant to, the terms of any contract or agreement to which it is a party or by which it or any of its assets and properties are bound.

6. **Term.** This Agreement shall commence on the Effective Date and may be terminated at any time upon written notice by either party. Upon termination, CB must cease the production of new Products including the Licensed Production but shall have three (3) months to sell off any (pre-approved) Products including the Licensed Property existing as of the date of termination.

7. **Indemnification.** Each party (the "Indemnifying Party") will indemnify, defend, and hold harmless the other party, and the other party's affiliates, subsidiaries, successors and assigns (as applicable), and any of their respective officers, directors, employees and agents (each, an "Indemnified Party"), from and against any and all damages, liabilities, costs and expenses, including reasonable legal fees and expenses, in any third party lawsuit or proceeding based upon or otherwise arising out of a breach or alleged breach of the Indemnifying Party's representations, warranties or covenants contained herein. Each Indemnified Party will (a) promptly notify the Indemnifying Party of such claim; (b) provide the Indemnifying Party with reasonable information, assistance and cooperation in defending the lawsuit or proceeding; and (c) give the Indemnifying Party full control and sole authority over the defense and settlement of such claim, subject to the Indemnified Party's approval of any such settlement, which approval will not be unreasonably withheld or delayed.

8. **Limitation of Liability.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS HEREUNDER, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, LOST PROFITS, LOST REVENUE, LOST BUSINESS, ANTICIPATED PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

9. Miscellaneous.

8.1 Successors and Assigns. CB may not assign this Agreement without Licensor's consent. This Agreement shall be assignable by Licensor, and inure to the benefit of and be binding upon the successors, legal representative, heirs and assigns of Licensor. Except as explicitly specified in this Section, this Agreement is not assignable.


8.2 Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto or their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

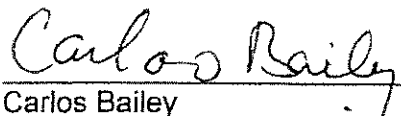
8.3 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Tennessee, without regard to principles of conflicts of law.

8.4 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

8.5 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereto and no party shall be liable or bound to another party in any manner by any warranties, representations or covenants except as specifically set forth herein. This agreement may not be amended except in a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.


Deford Bailey LLC
By: Shemika Wiley, Member


Carlos Bailey

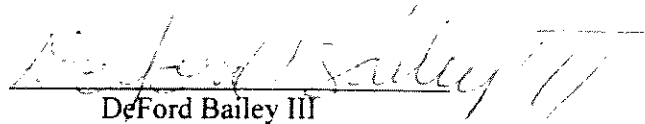
DECLARATION OF DEFORD BAILEY III

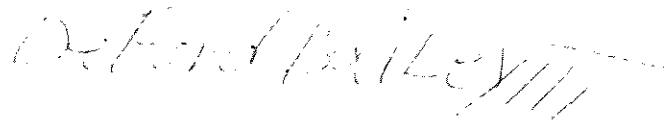
I, DeFord Bailey III, of full age, hereby declare as follows:

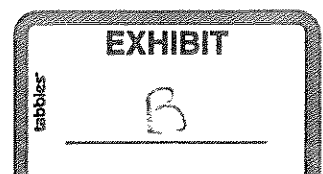
1. I have learned that attorney Walter M. Benjamin has filed an application for registration of the trademark DEFORD BAILEY in connection with harmonicas with the U.S. Patent and Trademark Office, application number 85304626.

2. I have never met or communicated with Mr. Benjamin and did not authorize him to file the application on my behalf or represent me in connection with any legal matters.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2 day of June, 2011.


DeFord Bailey III





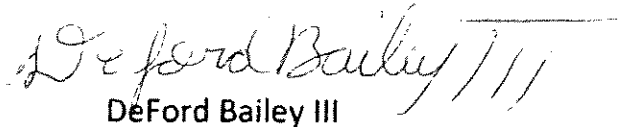
June 2, 2011

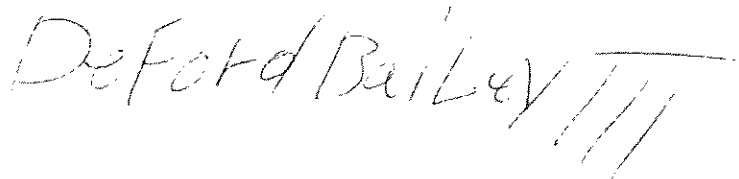
Walter M. Benjamin
Attorney at Law
P. O. Box 6099
Tulsa, OK 74148-0099

Dear Mr. Benjamin:

I understand that you have filed a federal trademark application on my behalf for the mark DEFORD BAILEY. I have never spoken with you or authorized you to represent me or file a trademark application on my behalf. I demand that you immediately withdraw the application.

Sincerely,


DeFord Bailey III



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DEFORD BAILEY, LLC,)	
Opposer,	)	OPPOSITION NO. 91209857
)	
-vs-	)	APPLICATION SERIAL NO. 85304626
)	
CARLOS DEFORD BAILEY,	)	Published in the Official Gazette on
Applicant.	)	February 19, 2013

APPLICANT'S RESPONSE TO OPPOSER REQUEST FOR ADMISSIONS

COMES NOW Applicants, Carlos Deford Bailey and Deford Bailey III, by and through their attorney, Walter M. Benjamin, and for their Answer to Opposer's Request for Admissions, submits the following:

1. Admit that the pending application was filed without the prior authorization of Deford Bailey III.

RESPONSE: Not Admitted.

2. Admit that the pending application was filed without the knowledge of Deford Bailey III.

RESPONSE: Not Admitted.

3. Admit that Attorney Walter M. Benjamin had never met or communicated with Deford Bailey III before the pending application was filed.

RESPONSE: Not Admitted.

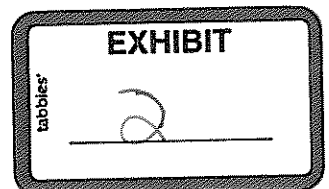
4. Admit that the Answer was filed without the prior authorization of Deford Bailey III.

RESPONSE: Not Admitted.

5. Admit that Carlos Bailey signed the document entitled "Name and Likeness Licensing Agreement" attached hereto as Exhibit "A".

RESPONSE: Admitted.

6. Admit that Deford Bailey III signed the declaration attached as "Exhibit B".



RESPONSE: Not Admitted.

Respectfully submitted,
Carlos Deford Bailey
Deford Bailey, III

By:

Walter M. Benjamin

Walter M. Benjamin
Attorney for Applicants
P.O. Box 6099
Tulsa, OK 74148
(918) 694-7891
Fax: (877) 532-0369
wabenj@netzero.com

Verification

STATE OF TENNESSEE

)

ss.

County of

)

)

We, Carlos Deford Bailey and Deford Bailey III, state that we have read the foregoing Responses to Opposers Request for Admissions, and that the responses are true and correct to our knowledge and belief.

Carlos Deford Bailey
Carlos Deford Bailey

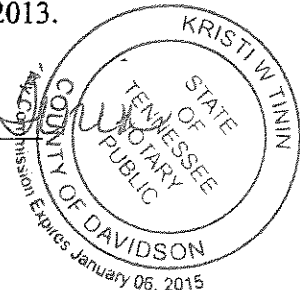
Deford Bailey III
Deford Bailey III

Subscribed and sworn to before me this 22nd day of November, 2013.

Kristi W. Tinn
Notary Public

My commission expired

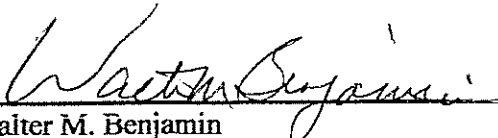
Jan. 06, 2015



Certificate of Service

I, Walter M. Benjamin, hereby certify that on the 19th day of November, 2013, he placed in the U.S. Mail with proper postage thereon a true and correct copy of the foregoing Applicants Response to Opposers Request for Admissions addressed to:

Maria A. Spear
Amy J. Everhart
Everhard Law Firm, PLC
1400 Fifth Ave. North
Nashville, TN 37208


Walter M. Benjamin